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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,957	04/27/2005	Martin Freudiger	P/1336-196	2031
2352 7590 03/03/2011 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER MARCO'ANTONI, PAUL D				
ART UNIT		PAPER NUMBER		
1731				
MAIL DATE		DELIVERY MODE		
03/03/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/532,957

**Applicant(s)**

FREUDIGER, MARTIN

**Examiner**

Paul Marcantoni

**Art Unit**

1731

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1/4/11 response to ex parte quayle.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-4, 9, and 11-16 is/are allowed.
- 6) ☒ Claim(s) 5-8, 10 and 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Allowed Claims:

Claims 1-4,9, and 11-16 are allowable.

However, a new grounds of rejection and withdrawal of finality was necessitated because the examiner inadvertently overlooked problems with respect to claim language for the now rejected claims below.

Correction of these claims will lead to final condition for allowance for this application.

Rejected Claims under 35 USC 112 Second Paragraph:

Claims 5-7,10, and 17-19 are rejected under the second paragraph of 35 USC 112 as failing to particularly point out and distinctly claim applicants' invention.

The terms M3 (additional mixture) has never been defined and particularly pointed out and distinctly claimed within the claims and is vague and indefinite. See claim 5.

Also, in claim 5, the term "defined application-oriented dependent proportions" is vague and indefinite as applicants do not particularly point out and distinctly claim their invention or what this term means. It is the equivalent to saying predetermined proportions which is also indefinite claim language.

Claim 6 is indefinite because if M3 as applicants allege is a mixture it would also comprise an additional component. Gypsum alone does not make a mixture nor do applicants particularly point out and distinctly claim the specific proportions of the M3 mixture.

Claim 7 is indefinite because again M3 reads upon one component and one component does not make up a mixture. A mixture needs to be at least two components. The applicants do not particularly point out and distinctly claim how much flow agent and what the other components (and their amounts) are for mixture M3.

Claim 8 is similar in criticism to claim 6 and indefinite. Gypsum alone does not make a mixture nor do applicants particularly point out and distinctly claim the specific proportions of the M3 mixture. What is in the mixture besides gypsum and also how much of each component is in mixture M3 (once the other unknown components are identified for mixture M3)?

Claim 10 is indefinite only in that elongate should be ~~—elongated---~~. If this amendment is made this claim will be allowable.

Claim 17 is indefinite with respect to M3 mixture once again. Claim 17 is definite with respect to specific amounts of mixtures M1 and M2 but again the problem is mixture M3 and the vague and indefinite claim language in this claim.

The terms "and an additional mixture M3 provided in defined application-oriented dependent proportions" are indefinite.

The terms "the mixture M2 comprised of calcium carbonate  $\text{CaCO}_3$  and magnesium carbonate  $\text{MgCO}_3$  in "defined application-oriented dependent proportions" are indefinite also. What are these defined proportions of M2? This expression is exactly the same as saying "predetermined" which is understood in the art as indefinite.

The terms "preparing the mixture M3 further comprising at least one additional material in "defined application-oriented proportions" is indefinite. How can a mixture be one material in M3? What is the mixture components and their specific amounts in M3? This is thus indefinite. Also, the terms defined application-oriented proportions is equal to "predetermined" which is an indefinite term. This should be removed everywhere it is

used in all claims in favor of specific mixture amounts and identity of components for all mixtures.

The terms "and preparing the mixture M1 of the binder and the mineralizer in defined application oriented dependent proportions" are indefinite. Again, the terms "defined application oriented dependent proportions is equal to predetermined and both are indefinite terms. Delete all instances of this terminology in claim 17 and throughout claims.

The term "desired" consistency is indefinite in claim 17. Delete the term "desired" to resolve.

Claim 18 is indefinite for the same reasons as claim 17. The terms "defined application oriented proportions" are indefinite in all three instances it is stated in claim 17 just as the term "predetermined" (its equivalent term) is indefinite.

The terms "mixture M3 and at least one additional material" is indefinite. How can the mixture M3 be one component and if it is not what are the specific components of M3 and their specific amounts?

The term PB needs to be written out in long form as to what it means and please do so in your next response in claim 19 and in claim 18 as well. The overuse of abbreviations should be avoided. The term "determined specifications" is indefinite in claim 19.

Should applicants resolve the issues under 35 USC 112 second paragraph it is hoped and expected that this application would by next response be in condition for allowance.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Paul Marcantoni/  
Primary Examiner, Art Unit 1731